AMENDED AND RESTATED UNIT CONTINGENT ENERGY PURCHASE AGREEMENT

This AMENDED AND RESTATED UNIT CONTINGENT ENERGY PURCHASE AGREEMENT, dated as of July 2, 2004 (this "Agreement"), is made and entered into, by and between the California Department of Water Resources an agency of the State of California, acting solely under the authority and powers created by AB1-X, codified as Sections 80000 through 80270 of the California Water Code (the "Act"), and not under its powers and responsibilities with respect to the State Water Resources Development System (the "Department" or the "Buyer"), and Clearwood Electric Company, LLC, a limited liability company organized and existing under the laws of the State of Nevada (the "Seller");

WITNESSETH:

WHEREAS, the Department and the Seller entered into a Firm Energy Purchase Agreement, dated June 22, 2001 (the "Original Agreement"); and

WHEREAS, the Department and the Seller entered into an Amended and Restated Firm Energy Purchase Agreement, dated as of November 20, 2002 (the "Prior Agreement"); and

WHEREAS, the Department and the Seller wish to amend and restate the Prior Agreement to include the terms and provisions as set forth herein (the "Agreement"); and

NOW, THEREFORE, in consideration of the foregoing, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. The following terms shall have the respective meanings in this Agreement:

"Affiliate" means an entity under the direction and control of a Party.

"Authorized Representative" shall mean the person or persons designated in **Appendix B** to this Agreement as having full authority to act on behalf of a party for all purposes hereof.

"Availability Factor" means the ratio of (1) the MWh delivered in a Summer Month to (2) the product of the Nominal Rating and the total hours in the month.

"Billing Address" means the billing address specified in **Appendix B** to this Agreement or as otherwise specified by the Department.

"Business Day" means any day other than a Saturday or Sunday or a holiday observed by Federal Reserve member banks in the State of Nevada and the State of California.

"California Facility" means the geothermal energy driven electrical generation facility or facilities to be developed by the Seller on property leased or purchased by or otherwise available to the Seller at or near the western boundaries of Clear Lake, Lake County, California as further described in **Appendix A** to this Agreement, including all associated structures, machinery and equipment and other property, both real and personal, used in the operation of the Facility.

"CAISO" shall mean the California Independent System Operator.

"Costs" shall have the meaning set forth in Section 6.03 hereof.

"Credit Guarantee Fund" means the special reserve fund to be established and maintained by the Seller pursuant to the provisions of Section 7.01 of this Agreement.

"Defaulting Party" shall have the meaning set forth in Section 6.01 hereof.

"Delivery Point" shall have the meaning set forth in **Appendix A** to this Agreement.

"Event of Default" shall have the meaning set forth in Section 6.01 hereof.

"Facility" means the California Facility or the Nevada Facility, as applicable. In either case, the Facility will have a maximum Nominal Rating of 30MW net to the Delivery Point; however, the actual amount of energy available for delivery and purchase at the Delivery Point may be less due to geothermal reservoir conditions and seasonal variations in the ambient air conditions at the site of the Facility.

"Fallon Nevada Geothermal Plant" means the Nevada Facility, plus any additional geothermal energy driven turbine island generators and any other associated structures, machinery and equipment and other real and personal property owned, controlled or operated by the Seller in Fallon, Nevada. Currently, the Fallon Nevada Geothermal Plant is designed to include one turbine island consisting of a 15 MW turbine generator set in addition to the 30 MW turbine generator set and associated assets defined herein as the "Nevada Facility."

"FERC" means the Federal Energy Regulatory Commission.

"Forced Outage" shall have the meaning set forth in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines.

"Fund" means the Department of Water Resources Electric Power Fund as set forth in the Act, as established by February 1, 2001, Assembly Bill 1, First Extraordinary Session.

"Incremental Imbalance Energy Price" means the CAISO determined hourly "Ex-Post Zonal Average Energy Price (Uninstructed Energy)" for NP-15, publicly reported by the CAISO at OASIS.CASIO.com, at Tab "Ex Post", as amended by the CAISO from time to time.

"Initial Delivery Date" shall be the date not later than the date stated in **Appendix A** to this Agreement on which the Seller complies with the conditions set forth in Section 2.06 hereof for at least one of the Facilities.

"Invoice Month" means the calendar month after the delivery of Unit Contingent Energy for which an invoice is being issued.

"Market Quotation Average Price" shall mean the average of the good faith quotations solicited from not less than five (5) Reference Market-makers disregarding the highest and lowest quotations. If quotations cannot be obtained from five Reference Market-makers, the Market Quotation Price shall be the average of all quotations received.

"Market Value" shall have the meaning set forth in Section 6.03 hereof.

"Moody's" means Moody's Investor's Services, Inc. or its successor.

"Nevada Facility" means the geothermal energy driven turbine island generator to be developed by the Seller on property leased or purchased by or otherwise available to the Seller in Fallon, Nevada, as further described in **Appendix A** to this Agreement, including all associated structures, machinery and equipment and other real and personal property.

"NERC" shall mean the North American Electric Reliability Council or any successor organization.

"Nevada Facility Transmission Losses" shall mean the losses of Unit Contingent Energy between the high voltage side of the Facility switchyard transformers and the Delivery Point, where such losses shall be calculated in accordance with the transmission loss provisions of the SPPC Open Access Transmission Tariff (OATT) filed with the FERC, or any successor transmission loss factor established in accordance with State of Nevada or Federal law, regulation or standard applicable to the facilities required to deliver Unit Contingent Energy from the Facility to the Delivery Point. In the event the OATT or successor provision for transmission losses does not include losses on 60 kilovolt or lower facilities required to deliver the Unit Contingent Energy from the Nevada Facility to the Delivery Point, the transmission losses shall be as reasonably determined by SPPC or the successor entity responsible for determination of operating conditions of such 60 kV or lower voltage facilities.

"Nominal Rating" means the rating of the Facility measured at the high voltage side of the Facility switchyard transformers as established during the Nominal Rating Test, currently estimated to be a maximum of 30 MW net to the Delivery Point during normal operation conditions, as it may be from time to time adjusted. Notwithstanding any adjustments, the Nominal Rating shall never be higher than 30MW nor lower than 10MW.

"Nominal Rating Test" shall have the meaning set forth in Section 2.06(c) hereof.

"Non-Defaulting Party" shall have the meaning set forth in Section 6.01 hereof.

"NP15" as it is used herein shall mean that portion of the CAISO controlled transmission grid north of Path 15, designated as the Northern Active Congestion Management Zone in Appendix I to the CAISO Electric Tariff filed with FERC, and does not include or encompass any load zone, path, or control area outside the state of California or external to transmission interfaces within the electrical region under CAISO's control. The parties specifically agree, that

Fallon, Summit sub-station and other points within the Sierra Pacific Power Company control area, are not located within CAISO Zone NP15.

"Per Unit Market Price" means the applicable price per MWh determined in accordance with Section 6.03.

"Operating Limits" shall have the meaning assigned to such term in **Appendix A** to this Agreement.

"Party" or "Parties" shall mean each of Seller, the Department or both, unless the context implies otherwise.

"Present Value Rate" shall have the meaning set forth in Section 6.03 hereof.

"Prudent Electrical Practices" shall mean those practices, methods, and equipment procedures as changed from time to time, that are commonly used in prudent electrical engineering and operations to design and operate electric equipment and alternative energy facilities lawfully, safely, dependably, efficiently and economically.

"Purchase Price" means the price set forth in **Appendix A** to this Agreement.

"Qualified Electric Corporation" means an electrical corporation, as defined by the Act, whose long-term unsecured senior debt is rated BBB or better by S&P and Baa2 or better by Moody's.

"Reference Market-maker" means any marketer, trader or seller of or dealer in electric energy products whose long-term unsecured senior debt is rated BBB or better by S&P and Baa2 or better by Moody's.

"Replacement Agreement" means any agreement identical to this Agreement excluding Section 2.04 and **Appendix C** to this Agreement together with such additional changes as Buyer and Seller shall mutually agree. Such Replacement Agreement shall state that it is a Replacement Agreement within the meaning of this Agreement and shall constitute a novation for which there is adequate consideration.

"Replacement Contract" means a contract having a term, transaction quantity, availability rate, delivery rate, Delivery Point and product configuration substantially similar to the remaining Term, transaction quantity, availability rate, delivery rate, Delivery Point and product configuration of this Agreement.

"Sale Price" means the price at which the Seller, acting in a commercially reasonable manner, resells at the Delivery Point any Unit Contingent Energy not received by the Department from the Seller, deducting from such proceeds any (i) costs reasonably incurred by the Seller in reselling such Unit Contingent Energy; and (ii) additional transmission charges, if any, reasonably incurred by the Seller in delivering such Unit Contingent Energy from the Delivery Point to the third party purchasers, or at the Seller's option, the market price at the Delivery Point for such Unit Contingent Energy not received as determined by the Seller in a commercially reasonable manner; *provided, however,* in no event shall such price include any

penalties, ratcheted demand or similar charges nor shall the Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize the Department's liability. For purposes of this definition, the Seller shall be considered to have resold such Unit Contingent Energy to the extent the Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby the Seller makes an alternate sale of the Unit Contingent Energy to a third party at the Delivery Point.

"S&P" means Standard & Poor's Ratings Services (a division of McGraw-Hill, Inc.) or its successor.

"Scheduling Coordinator" means an entity authorized to submit to the CAISO or the SPPC Control Center, in the case of the Nevada Facility, a balanced generation or demand schedule on behalf of one or more generators, and one or more end-user customers.

"SPPC" shall mean Sierra Pacific Power Company.

"Summer Months" means the months of June, July, August, and September.

"State" means the State of California.

"Term" shall have the meaning set forth in Section 2.05.

"Termination Payment" shall have the meaning set forth in Section 6.02 hereof.

"Uncontrollable Force" shall have the meaning set forth in Section 5.01 hereof.

"Unit Contingent Energy" means the electrical energy produced, flowed and delivered from the Facility to the Delivery Point, net of transmission losses, pursuant to the terms hereof, being the integral with respect to time of the instantaneous power, measured in units of watt-hours or standard multiple thereof, e.g. 1,000 Wh = 1 kWh, 1,000 kWh = 1 MWh, etc.

ARTICLE II

PURCHASE AND SALE OF ENERGY

Section 2.01. Purchase and Sale of Unit Contingent Energy. (a) The Seller shall sell and deliver, or cause to be sold and delivered, and the Department shall purchase and receive, or cause to be purchased and received, the Unit Contingent Energy at the Delivery Point, beginning on the Initial Delivery Date (or before the Initial Delivery Date as provided below) and continuing for the Term set forth in **Appendix A** to this Agreement, and for which the Department shall pay the Seller the Purchase Price. The Seller shall not be entitled to deliver energy from sources other than the Facility.

(b) The Seller shall be obligated to schedule with the Department and to generate the Unit Contingent Energy at the Facility's maximum capability available in each hour, unless (i) restricted by the exercise of Prudent Electrical Practices and Operating Limits, or (ii) the Department requests Seller to curtail generation for hydro overflow conditions as set forth in **Appendix A** to this Agreement. The amount of MWh of the scheduled Unit Contingent Energy

the Department is obligated to purchase from the Seller in each hour shall not be greater than the actual Nominal Rating. Should the Seller in any hour generate an amount of the Unit Contingent Energy greater than the Nominal Rating, and Buyer elects not to purchase such excess energy at the Purchase Price, or fails to so elect within a reasonable time of notice of the availability of such energy, the Seller shall have the right to sell such Unit Contingent Energy to third parties.

(c) If the actual amount of MWh of the Unit Contingent Energy generated from the Facility in any hour varies from the final scheduled amount of MWh of the Unit Contingent Energy, the Department shall pay the Seller the lesser of (i) the Purchase Price for the scheduled Unit Contingent Energy, or (ii) the CAISO determined Incremental Imbalance Energy Price for any negative imbalance energy. Seller shall submit a schedule change in the event that Facility generation is reduced from the scheduled amount due to a Forced Outage or other event at any time prior to the close of the next occurring CAISO scheduling deadline. The Department shall not be obligated to purchase any Unit Contingent Energy from the Facility in excess of the scheduled amount; provided, however, that Buyer shall have the right to purchase such excess energy at the Purchase Price, which right shall be exercisable within a reasonable time following receipt of notice of the availability of such excess energy.

(d) Seller's failure to deliver the scheduled Unit Contingent Energy shall be excused (a) by an Uncontrollable Force, (b) if the Facility is unavailable as a result of a Forced Outage (c) if the Facility is unavailable as a result of scheduled maintenance or (d) by the Department's failure to perform its obligations hereunder, provided however, that such failure by the Department was the proximate cause for Seller's failure to deliver such Unit Contingent Energy.

(e) The Seller shall be responsible for any costs or charges imposed on or associated with the Unit Contingent Energy up to and at the Delivery Point. The Department shall be responsible for any costs or charges imposed on or associated with the Unit Contingent Energy from the Delivery Point.

(f) Seller shall give prompt written notice to Buyer of, and Buyer shall have the option to purchase and receive according to the terms and conditions hereof, any energy produced by the California Facility prior to the Initial Delivery Date for the California Facility at the Purchase Price. Seller shall sell and deliver such energy upon notice from Buyer. Seller's written notice shall be provided no later than 10 a.m. on the day preceding the expected delivery day and shall include a forecast of the amount of MWh of Unit Contingent Energy Seller can deliver and the times at which such delivery is expected to occur. Buyer shall not accept any energy produced by the Nevada Facility prior to the Initial Delivery Date for the Nevada Facility.

(g) In no event shall the Seller have the right to procure electric energy from sources other than the California Facility and Nevada Facility for sale and delivery pursuant to this Agreement, other than imbalance energy purchased from CAISO to cover any deviations between scheduled Unit Contingent Energy and actually delivered Unit Contingent Energy and such imbalance energy shall be subject to the limitations set forth in Section 2.01(c) above.

(h) All Unit Contingent Energy shall be measured by an independent electric revenue meter dedicated solely to measuring the Unit Contingent Energy provided by Seller from the Facility under this Agreement. When delivering from the California Facility, the Seller, or the

Seller's Scheduling Coordinator, shall cause such Facility's monthly CAISO electric revenue meter data to be measured, recorded and delivered with the monthly invoice. When delivering from the Nevada Facility, Seller shall direct SPPC to deliver the electric revenue metering data for all meters at the Fallon Nevada Geothermal Plant and the approved North American Electric Reliability Council Electronic Tags from the Scheduling Coordinator each month to Buyer. The Seller shall ensure that a copy of all such monthly electric meter data is delivered to the Department concurrent with the invoice the Seller submits under Section 4.01 of this Agreement.

Section 2.02. Transmission and Scheduling. (a) The Seller shall arrange and be responsible for transmission service to the Delivery Point and shall, at the Seller's expense, obtain services of the Scheduling Coordinator necessary to deliver the Unit Contingent Energy to the Delivery Point. The Seller shall be responsible for all CAISO costs and charges, including imbalance energy charges due to deviations from scheduled deliveries. The Department shall arrange and be responsible for transmission service from the Delivery Point and shall schedule with its transmission providers to receive the Unit Contingent Energy at the Delivery Point. All deliveries shall be scheduled in accordance with the Operating Limits and CAISO or in the case of the Nevada Facility, the SPPC Control Center, requirements to fulfill contractual metering and interconnecting requirements set forth in the CAISO tariff and the implementing CAISO standards and requirements, including but not limited to, executing a standard form CAISO Participating Generator Agreement, so as to enable the Seller to deliver Unit Contingent Energy to the Delivery Point which is on the CAISO Controlled Grid. The Seller shall be responsible for ensuring that Unit Contingent Energy deliveries are scheduled as firm power consistent with the most recent rules adopted by the applicable NERC regional reliability council and CAISO, or their respective successors. Risks of transmission curtailment or interruptions, unless due to the operation of an Uncontrollable Force, shall be the responsibility of the Seller up to and at the Delivery Point.

(b) No later than 30 days prior to the Initial Delivery Date, the Seller shall deliver to the Buyer its forecast of the amount of MWh of Unit Contingent Energy it expects to deliver each day of the period commencing on the Initial Delivery Date and ending on the next succeeding April 30. No later than April 1 of each year during the term of this Agreement, the Seller shall deliver to the Buyer its forecast of the amount of MWh of Unit Contingent Energy it expects to deliver each day of the twelve (12) month period commencing on the next succeeding May 1 (adjusted for any remaining term of this Agreement of less than twelve (12) months). No later than the fifteenth day of each calendar month, the Seller shall deliver to the Buyer its forecast of the amount of MWh of Unit Contingent Energy it expects to deliver each hour of each day of the succeeding calendar month. No later than noon on the Tuesday before each week commencing on the Sunday, immediately succeeding such Tuesday, at 12:00 A.M. midnight, Pacific time, and ending on the following Saturday at 11:59 P.M., Pacific time, the Seller shall deliver to the Buyer its update of the amount of MWh of Unit Contingent Energy it expects to deliver to the Buyer for each hour of each day of such week. No later than four (4) hours before the Seller's Scheduling Coordinator is required to submit its preferred day-ahead energy schedule to CAISO, the Seller shall deliver to the Buyer its preferred day-ahead schedule and, thereafter, the Seller shall immediately deliver to the Buyer notice of any changes to such preferred day-ahead schedule and the reason(s) for it.

(c) Notwithstanding anything to the contrary herein, in the event the Seller makes a same-day change to its schedule for any reason (other than an adjustment imposed by CAISO which results in an increase to its output, the Buyer shall have the right, but not the obligation, to take delivery of such Unit Contingent Energy and to pay for such increase in output at the Purchase Price per MWh set forth in **Appendix A** to this Agreement, which right must be exercised no later than one (1) hour prior to the deadline for the Buyer, in its capacity as a Scheduling Coordinator, to submit hour-ahead schedules to CAISO, otherwise such right shall be deemed not to have been exercised and the Buyer shall have neither the right nor the obligation to take delivery of such energy.

Section 2.03. Operation and Maintenance of Facility. (a) The Seller shall provide to the Department a list of scheduled maintenance outage periods by July 1 of each calendar year, but not later than six (6) months prior to the beginning of the proposed scheduled maintenance outage of the Facility or portion of the Facility. The Seller shall coordinate with the Department whenever possible to perform scheduled maintenance in order to minimize the impact on the Department's delivery of energy to customers. The Seller shall not schedule major overhauls of the Facility or the geothermal wellfield during the Summer Months.

(b) In the event the Facility or wellfield, or portions thereof, must be shut down for an unscheduled outage, the Seller shall notify the Department as soon as practicable of the necessity of such shutdown, the time when such shutdown has occurred, or will occur, and the anticipated duration and extent of such shutdown. The Seller shall take all reasonable measures and exercise its best efforts to avoid unscheduled outages and to limit the duration and extent of any such shutdown.

(c) An operating procedures document which details the operation and maintenance procedures to be followed by the Facility operators will be in place prior to delivery of Unit Contingent Energy to the Department and shall continue to be in place from such date throughout the term of this Agreement. A copy of the procedures document will be delivered to the Department at least 30 days prior to the commercial operation date for each Facility and 30 days prior to any change becoming effective.

(d) The Seller shall operate and maintain the Facility in accordance with Prudent Electrical Practices.

(e) The Seller shall operate the Facility such that it will not be in violation of any applicable environmental law, order or resolution. Without limitation, the Facility will not be (1) in violation of any order or resolution not subject to review promulgated by a California or Nevada air or water resources board or an air or water pollution control district; (2) subject to cease and desist orders not subject to review for violation of waste discharge requirements or discharge prohibitions; or (3) in violation of provisions of federal law relating to air or water pollution.

Section 2.04. Sources of Payment; No Debt of State. The Department's obligation to make payments hereunder shall be limited solely to the Fund and shall be payable from those certain Power Charges established and collected pursuant to the Rate Agreement, entered into by the Department with the California Public Utilities Commission pursuant to Section 80110 of the Act on March 8, 2002. Any liability of the Department arising in connection with this Agreement

or any claim based thereon or with respect thereto, including, but not limited to, any Termination Payment arising as the result of any breach or default or Event of Default under this Agreement, and any other payment obligation or liability of or judgment against the Department hereunder, shall be satisfied solely from the Fund. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF CALIFORNIA ARE OR MAY BE PLEDGED FOR ANY PAYMENT DUE UNDER THIS AGREEMENT. Revenues and assets of the State Water Resources Development System shall not be liable for or available to make any payments or satisfy any obligation arising under this Agreement.

Section 2.05. Term. The Term shall be set forth in **Appendix A** to this Agreement. This Agreement shall terminate upon expiration of the Term specified in **Appendix A** to this Agreement, unless earlier terminated in accordance with the provisions of this Agreement.

Section 2.06. Initial Delivery Date. (a) The Initial Delivery Date shall be the date upon which the Department (i) accepts in writing that the Seller has successfully completed the Nominal Rating Test in accordance with the procedure set forth in subsection (c) below, or (ii) has failed to reject the results of the Nominal Rating Test within the time specified in subsection (b)(ii) below.

(b) (i) The Seller shall provide the Department ten (10) Business Days advance written notice of the date the Seller intends to conduct the Nominal Rating Test, and provide to representatives of the Department access to the Facility to monitor and observe the Nominal Rating Test.

(ii) The Seller shall deliver the results of the Nominal Rating Test to the Department, by hard copy, facsimile, or other mutually agreed upon method, and the Department shall review the results of the Nominal Rating Test within ten (10) Business Days of the date of delivery thereof and shall notify the Seller, in writing, of its approval (or disapproval) and acceptance (or non-acceptance) of the results of such Nominal Rating Test, which approval the Department shall not unreasonably withhold.

(iii) Should the Department fail to reject the results of the Nominal Rating Test within ten (10) Business Days of the delivery thereof, the results shall be deemed to have been accepted by the Department and the Initial Delivery Date shall be 10 business days after the delivery of the Test Report to the Department.

(iv) In the event that the Department rejects the results of the Nominal Rating Test, it shall deliver to the Seller, by facsimile, within such ten (10) day period, a written notice of such rejection stating with particularity all of its reasons for it.

(c) (i) A test ("Nominal Rating Test") shall be performed to demonstrate that the Facility can operate in a reliable sustained manner. In particular, the Nominal Rating Test shall demonstrate that the Facility (x) achieved a net demonstrated capacity of not less than 25,000 kW as measured at the electric revenue meter located on the high voltage side of the Facility switchyard transformer during a continuous four (4) hour period powered only by geothermal energy; and (y) was in compliance with all applicable permits.

(ii) The Nominal Rating Test shall commence once the Facility has reached stable operation of at least 25,000 kW. The test shall be performed over a minimum

continuous period of four (4) hours with data collected at 15-minute intervals. The Nominal Rating shall be the average of the 15 minute readings over the 4 hour test period. During the Nominal Rating Test, the Facility shall be operated consistently with Prudent Electrical Practices and shall be in compliance with all applicable permit limits, regulatory and industry codes and standards. The Nominal Rating Test shall be run using all standard plant equipment and control systems in service without the benefit of temporary bypasses or manual controls that would not have been used in the day to day operation of the Facility. Should the Nominal Rating Test be interrupted for any reason prior to the end of the 4-hour duration, the test shall be restarted.

(d) Seller shall, at all times, use diligent commercial efforts to complete both the California Facility and the Nevada Facility and to achieve the Initial Delivery Date for either the California Facility and/or the Nevada Facility as soon as reasonably possible. If Seller shall achieve the Initial Delivery Date with the Nevada Facility, the purchase and sale provisions of Section 2.01 shall immediately take effect, provided that Seller shall continue to use diligent commercial efforts to complete the California Facility and begin commercial operations. Seller represents that it believes in good-faith that the Nevada Facility should be completed within 22-25 months of the execution of this Agreement (April-July, 2006). The parties hereby acknowledge that a primary objective of this Agreement is the construction of additional energy capacity. In the event that neither the California Facility nor the Nevada Facility meets all the conditions set forth in this Section 2.06 by January 1, 2007, Seller shall pay the following amounts not as a penalty but as liquidated damages for the period until such conditions have been met at either the California or Nevada Facility, regardless of the circumstances or reasons for that failure. Liquidated damages, as included in this Agreement, are fixed and agreed upon by and between Seller and Buyer to be the amount of damages Buyer would sustain as a result of Seller's failure to supply additional geothermal energy capacity by January 1, 2007. The amount of liquidated damages are as follows: if Seller has not achieved the Initial Delivery Date by January 1, 2007, Seller shall pay Buyer $3,000 in liquidated damages for each day from January 1, 2007 through December 31, 2007 that it has failed to achieve the Initial Delivery Date. Such fee shall be paid on a weekly basis in advance starting on January 1, 2007 for the first week of the delay and on every seventh day thereafter for each succeeding week until the Initial Delivery Date is achieved and the Facility is delivering power to Buyer under the Agreement, or through December 31, 2007. Buyer shall refund any overpayment of liquidated damages in the event the achievement of the Initial Delivery Date occurs other than at the end of a week.

(e) In the event the Agreement is terminated prior to January 1, 2008, all amounts that would have been owing absent such termination pursuant to sub-section (d) above assuming the Initial Delivery Date had not been reached prior to January 1, 2008, shall be due and payable by Seller to Buyer to the extent not already paid.

(f) If neither the California Facility nor the Nevada Facility has achieved an Initial Delivery Date by January 1, 2008, Buyer shall have the right to terminate the Agreement immediately upon written notice. If Seller has used diligent commercial efforts pursuant to Section 2.06(d) and nonetheless failed to achieve an Initial Delivery Date by December 1, 2007, Seller shall have the right to terminate the Agreement upon at least 30 days advance written notice, which shall be effective no sooner than January 1, 2008; provided however that Seller

shall not commercially operate the California or Nevada Facility prior to July 31, 2008 if it so terminates.

(g) Notwithstanding Section 5.01, for the avoidance of doubt, the time for Seller to achieve the Initial Delivery Date shall not be extended, the period during which the foregoing liquidated damages apply shall not be changed, and Buyer's right to terminate on January 1, 2008 shall not be delayed notwithstanding any past, present or future Uncontrollable Force or any other event or circumstance unless the parties mutually agree otherwise as evidenced by a written amendment signed by both parties.

Section 2.07. Nominal Rating Adjustment. (a) After the initial Nominal Rating Test, the average capacity at which the Facility operated continuously during the Test shall constitute the Nominal Rating.

(b) During the continuance of an Uncontrollable Force that results in a decrease of the capacity of the Facility, the Seller shall have the right to decrease the Nominal Rating. The Seller shall promptly inform the Department of the reasons for such decrease, expected duration, and steps it intends to take to reach its initial Nominal Rating.

(c) After an occurrence of an event caused by an Uncontrollable Force the Seller shall have a right (but not more than once a year) to request an adjustment of the Nominal Rating. The adjustment of the Nominal Rating shall be determined pursuant to another Nominal Rating Test to be conducted in accordance with Section 2.06(c), provided, however, that in no event shall such adjusted Nominal Rating exceed 30MW.

(d) Any other provisions of this Agreement notwithstanding, including but not limited to, Uncontrollable Force, in the event the Facility fails after the Initial Delivery Date for a period of more than 18 (eighteen) consecutive months to achieve the most recently adjusted Nominal Rating established in accordance with Section 2.06(c) for Unit Contingent Energy deliveries, adjusted for Transmission Losses, the Buyer may request a Nominal Rating Test to be performed. The results of such test performed in accordance with Section 2.06 (c) shall establish the new Nominal Rating and Buyer may elect, but shall not be obligated, to purchase energy delivered in any amount greater than such new Nominal Rating for the balance of the term of this Agreement at the Purchase Price. Buyer shall notify Seller in writing if Buyer is willing to purchase Unit Contingent Energy in an amount that is greater than such revised Nominal Rating.

Section 2.08. Location of Facility. Buyer agrees that either the California Facility or the Nevada Facility shall qualify as the "Facility," for purposes of the Agreement. Buyer hereby agrees to permit and Seller agrees to provide all Unit Contingent Energy up to the Nominal Rating solely from the Nevada Facility, on an interim basis, subject to all of the following:

(a) The Nominal Rating for the Nevada Facility shall be no greater than 30 MW.

(b) Once Seller commences delivery of Unit Contingent Energy from the California Facility it shall no longer be permitted to deliver Unit Contingent Energy from the Nevada Facility.

(c) Seller shall contract for firm transmission for all Unit Contingent Energy delivered under the Agreement from the Facility to the Delivery Point and shall provide Buyer

with evidence reasonably satisfactory to Buyer of such firm transmission (i) prior to the Initial Delivery Date for the Facility and (ii) subsequently upon request by Buyer. In the event of *any* transmission constraint on the SPPC system, Seller agrees to obtain alternative transmission for the Unit Contingent Energy if alternative transmission is available.

(d) While Seller may from time to time enter into contracts with third parties for the portion of the output of the Fallon Nevada Geothermal Plant that is not generated by the Nevada Facility, Buyer's rights under this Agreement shall be exclusive with respect to the capacity and output of the Nevada Facility and all delivery rights with respect thereto. However, whenever there is a reduction in generation capability due to scheduled maintenance or Forced Outages for common components in the geothermal plant or wellfield supplying both the Nevada Facility and the remaining portion of the Fallon Nevada Geothermal Plant, Seller shall reduce the quantity of energy delivered on a pro rata basis in proportion to the Nominal Rating of each turbine island.

(e) From time to time Seller may propose alternative facilities to be located in California. Buyer shall consider such proposals in good faith, to determine in its sole discretion whether such proposals would provide benefits to Buyer better than those provided by existing facilities. In the event that the parties mutually agree upon an alternative California location for a facility, it would be effected only by a signed amendment to this Agreement.

Section 2.09. Specific Representations, Warranties and Covenants Relating to the California Facility.

(a) As of the date hereof, with respect to the California Facility, the Seller represents, warrants and covenants as follows:

(i) The California Department of Oil, Gas, and Geothermal Resources as Lead Agency began a Draft Environmental Impact Report on November 27, 2002;

(ii) Seller owns or has legal control from the current owner of the site for the California Facility sufficient to construct and operate the California Facility for the duration of the Term in accordance with the provisions of this Agreement, subject to the receipt of governmental permits and approvals for the California Facility;

(iii) Seller has rights to the use of geothermal resources underlying the site for the California Facility for the Term sufficient to perform its obligations hereunder;

(iv) Seller has advised the EPA that if the California Facility is placed in operation it will re-inject water from the Herman Impoundment into its wells if that option is selected as a portion of the EPA's site remediation plan;

(v) Seller has retained an environmental engineering firm, and an engineering design firm for completion of the Project Environmental Impact Report ("EIR") and for design of the geothermal wellfield and geothermal powerplant;

(vi) Seller has completed all steps possible toward construction of the California Facility, in light of the permitting delays and Seller is unable to take any further steps until such time as the Lake County Planning Commission and Lake County

Supervisors remove their setback restrictions on geothermal development around Clear Lake to allow Seller to obtain a major use permit and financing for the California Facility. Seller expects the major use permit and financing to be completed within 180 days after the setback restrictions have been removed by Lake County; and

(vii) Seller plans to utilize an advanced binary Kalina cycle as the basis for the design and construction of its California Facility, a description of which is attached hereto as Appendix D; however, Seller may use another renewable geothermal energy conversion and electric generation process for the design and construction of its California Facility if the resource characteristics prove to be unsuitable for use of the Kalina technology.

Seller shall provide Buyer with evidence, reasonably satisfactory to Buyer supporting the foregoing representations and warranties within 90 days of the execution of this Agreement.

(b) Promptly upon completion Seller shall provide Buyer with copies of each of the following:

(i) Environmental Impact Report;

(ii) all required permits for geothermal well testing, project construction, and ability to make the Facility operational, in accordance with the provisions of this Agreement;

(iii) system impact studies associated with the electric interconnection of the Facility undertaken by or on behalf of PG&E;

(iv) CAISO facilities studies;

(v) electric transmission interconnection agreements between Seller and PG&E for the Facility;

(vi) evidence of removal of the Lake County moratorium on land use permits relevant to the Facility;

(vii) verification of site control through purchase or lease option agreement;

(viii) EPA review and acceptance of the superfund site remediation plan;

(ix) results of a transmission interconnect study from PG&E that demonstrates the reasonable ability of a nominal 25 MW geothermal powerplant to interconnect with and deliver energy to the PG&E electric system at the Redbud substation;

(x) engineer-procurement-construction or major equipment procurement contract evidencing that turbine-generator equipment for the Facility is under contract, with purchase price and other sensitive provisions redacted to protect sensitive commercial terms of such contract; and

(xi) notice of any and all documentation required for regulatory approval and copies thereof, upon Buyers request.

(c) The estimated timeline for completion of the California Facility is attached hereto as Appendix E. Seller shall provide Buyer with quarterly or monthly progress reports as required by Buyer.

Section 2.10. Specific Representations, Warranties and Covenants Relating to the Nevada Facility.

(a) As of the date hereof, with respect to the Nevada Facility, Seller represents, warrants and covenants as follows:

(i) Seller has completed a technical assessment of the ability of the Unit Contingent Energy to flow from the Nevada Facility through the SPPC electric system, over CAISO-Sierra Path 24 into NP 15. Such assessment shows the feasibility of such deliveries without curtailment issues, including the feasibility of electric interconnection, and SPPC has either conducted such study or has evidenced in writing its agreement with the results of such assessment.

(ii) Seller's Affiliate Amp Capital Partners has executed a Letter of Intent to acquire, through an Affiliate, certain Fallon Nevada Geothermal Plant assets from Stillwater Holdings, LLC and/or its affiliated entities. The Fallon Nevada Geothermal Plant assets to be acquired include a geothermal lease located on approximately 8000 surface acres to which an Affiliate of Seller will have rights to use for purposes of the Nevada Facility. No rights, excluding permits, other than those to be acquired, will be required for the construction and operation of the Nevada Facility, nor the use of geothermal resources for the Nevada Facility other than state and local permits for construction and operation. Seller intends that the Fallon Nevada Geothermal Plant shall include two turbine islands, with one turbine island consisting of a 30 MW turbine generator set, and one turbine island consisting of a 15 MW turbine generator set. The 30 MW turbine island shall be solely dedicated to providing the Unit Contingent Energy under the Agreement.

(iii) Seller has retained an environmental engineering firm, and an engineering design firm for compliance with permitting requirements, including required environmental reports and disclosures relating to the Nevada Facility. Seller will make representatives from such firms available for due diligence upon request by Buyer.

(iv) Seller shall utilize, if technically feasible, an advanced binary Kalina cycle as the basis for the design and construction of its Nevada Facility, a description of which is attached hereto as Appendix D.

Seller shall provide Buyer with evidence, reasonably satisfactory to Buyer, supporting the foregoing representations and warranties within 90 days of the execution of this Agreement.

(b) Promptly upon completion Seller shall provide Buyer with copies of each of the following:

(i) completion of compliance with permitting requirements, including required environmental reports and disclosures relating to the Nevada Facility;

(ii) all required permits for geothermal well testing, project construction, and ability to make the project operational;

(iii) system impact studies associated with the electric interconnection of the Nevada Facility undertaken by or on behalf of SPPC;

(iv) CAISO facilities studies;

(v) electric transmission interconnection agreements between the Affiliate of Seller acquiring the Nevada Facility assets and SPPC for the Nevada Facility;

(vi) verification of site control and access to the use of the underlying geothermal resource sufficient for the operation of the Nevada Facility through purchase or lease option agreements; and

(vii) engineer-procurement-construction or major equipment procurement contract evidencing that turbine-generator equipment for the Nevada Facility is under contract, with purchase price and other sensitive provisions redacted to protect sensitive commercial terms of such contract.

The parties agree to negotiate in good faith any additional requirements for the Nevada Facility. Buyer agrees that this Agreement may be assigned by Seller, without the further consent of Buyer, to Seller's Affiliate that will acquire the Nevada Facility assets so long as (i) such assignment meets the requirements set forth in 10.08(a) and (ii) Seller retains all obligations relating to the California Facility.

(c) The estimated timeline for completion of the Nevada Facility is attached hereto as **Appendix E**. Seller shall provide Buyer with quarterly or monthly progress reports as required by Buyer.

Section 2.11. Green Tag Credits. Seller represents that it holds, or, in the case of the Nevada Facility, that an Affiliate of Seller will hold upon completion of the acquisition of the Nevada Facility assets, the rights to all Environmental Attributes, as defined below, associated with the applicable Facility, and Seller agrees to convey, or cause its Affiliate to convey, in the case of the Nevada Facility, to Buyer as soon as available for no additional consideration, all of the Environmental Attributes associated with Unit Contingent Energy deliveries from the applicable Facility. For purposes of this Agreement, "Environmental Attributes" mean any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the operation of the applicable Facility. Environmental Attributes include, but are not necessarily limited to: (1) any avoided emissions of pollutants to the air, soil or water such (subject to the foregoing) sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4) and

other greenhouse gases (GHGs) that have been determined to contribute to climate modification; and (3) the reporting rights such as Green Tag Reporting Rights to these avoided emissions. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with Federal or state law, if applicable, and to a Federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on kWh basis and one Green Tag represents the Environmental Attributes associated with one (1) MWh of energy.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

Section 3.01. Representations and Warranties of the Department. The Department makes the following representations and warranties:

(a) Pursuant to Act Section 80000 *et seq*. the Department is authorized and empowered to enter into the transactions contemplated by this Agreement and has taken all requisite action to carry out its obligations hereunder. By proper action of its officers, the Department has duly authorized the execution and delivery of this Agreement.

(b) The Fund has been validly established under the Act and the Department is required under the provisions of Section 80200 of the Act to deposit all revenues payable to the Department under Division 27 of the Act into the Fund.

(c) The execution, delivery and performance by the Department of this Agreement and the consummation by the Department of the transactions herein contemplated have been duly authorized and will not violate any provision of law in any material respect, or any order or judgment of any court or agency of government having jurisdiction over the Department, or be in material conflict with or result in a material breach of or constitute (with due notice and/or lapse of time) a material default under any material indenture, material agreement or other material instrument to which the Department is a party or by which it or any of its property is subject to or bound.

(d) Assuming due and proper execution hereof by the Seller, this Agreement, constitutes the legal, valid and binding obligation of the Department enforceable against the Department in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and subject to general rules of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

Section 3.02. Representations and Warranties of the Seller. The Seller makes the following representations and warranties:

(a) The Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Nevada, is duly qualified to do business in and is in

good standing under the laws of the State, is not in violation of any provision of its articles of formation and its operating agreement, has the power and authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Agreement. To the best of the Seller's knowledge, the Seller is duly qualified to do business in every jurisdiction in which such qualification is necessary.

(b) The execution, delivery and performance of this Agreement and the consummation of the transactions by the Seller herein contemplated have been duly authorized by all material requisite action on the part of the Seller and will not violate any provision of law, any order or judgment of any court or agency of government, or the certificate of incorporation or by-laws of the Seller, or any material indenture, agreement or other instrument to which the Seller is a party or by which it or any of its property is subject to or bound, or be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a material default under any such indenture, agreement or other instrument.

(c) This Agreement constitutes the legal, valid and binding obligation of the Seller enforceable against the Seller in accordance with its terms subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(d) There is no substantive action or proceeding pending or, to the best knowledge of the Seller, threatened by or against the Seller by or before any court or administrative agency that might adversely affect the ability of the Seller to perform its obligations under this Agreement and all material authorizations, consents and approvals of governmental bodies or agencies required to be obtained by the Seller as of the date hereof in connection with the execution and delivery of this Agreement or in connection with the performance of the obligations of the Seller hereunder have been obtained.

(e) The Seller is solvent. No action has been instituted, with respect to the Seller, by the Seller or by another person or entity of a bankruptcy, reorganization, moratorium, liquidation or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditor's rights or petition have been presented or instituted for its winding-up or liquidation.

(f) There are no Uncontrollable Force events as of the date of this Agreement. The claims of the occurrence of an Uncontrollable Force event under, and as defined in the Prior Agreement, are hereby waived.

ARTICLE IV

PAYMENTS

Section 4.01. Billing Period; Billing Address. The accounting and billing period for transactions under this Agreement shall be one (1) calendar month. Bills sent to the Department shall be sent to the Billing Address.

Section 4.02. Payments. Payments for amounts billed hereunder shall be paid so that such payments are received by the Seller by the last Business Day of the Invoice Month or the 10th day after receipt of the bill, whichever is later. Payment shall be made at the location designated by the Seller to which payment is due. Payment shall be considered received when the Department mails payment; *provided, however,* that if requested by the Seller, the Department will make any such payment to the Seller by wire transfer (with any wire transfer fees to be paid by the Seller). If the due date falls on a non-Business Day of either the Department or the Seller, then the payment shall be due on the next following Business Day.

Section 4.03. Late Payments. Amounts not paid on or before the due date shall be payable with interest accrued at the rate of one percent (1%) above the Pooled Money Investment Account rate accrued in accordance with the California Government Code Section 927.6(6) not to exceed 15%.

Section 4.04. Disputes and Adjustments of Invoices. Either Buyer or Seller may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twenty-four (24) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the rate provided in Section 4.03 from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the rate provided in Section 4.03 from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 4.04 within twenty-four (24) months after the invoice is rendered or any specific adjustment to the invoice is made.

Section 4.05. Records Retention and Audit. (a) *Records Retention*. The Department and the Seller, or any third party representative thereof, shall keep complete and accurate records, and shall maintain such records and other data as may be necessary for the purpose of ascertaining the accuracy of all relevant bills, data, estimates, or statements of charges submitted hereunder. Such records shall be maintained for a period of three (3) years after final payment under this Agreement. Within three (3) years from final payment under this Agreement, any party to any transaction may request in writing copies of the records of the other party to the extent reasonably necessary to verify the accuracy of any statement or charge. The party from which documents or data has been requested shall cooperate in providing the documents and data within a reasonable time period.

(a) *Audit*. The Seller agrees that the Department, the Department of General Services and the Bureau of State Audits, or their designated representatives, shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. The Seller agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. The Seller

agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Seller agrees to include similar right of the State to audit records and interview staff in any contractors or suppliers related to performance of this Agreement.

ARTICLE V

UNCONTROLLABLE FORCES

Section 5.01. Uncontrollable Forces. (a) Unless otherwise expressly provided in this Agreement, no Party shall be considered to be in breach of this Agreement to the extent that a failure to perform its obligations under this Agreement shall be due to an Uncontrollable Force. The term "Uncontrollable Force" means any cause beyond the control of the Party affected, which cause the affected Party by the exercise of due diligence is unable to avoid, and, having occurred, overcome, including but not restricted to flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance or disobedience, labor dispute (except strikes or labor disputes resulting from unsafe working environment or unfair labor practices), labor or material shortage (except if caused by Seller's failure to maintain sufficient inventories and stores of spare parts), sabotage, restraint by court order or public authority, and action or inaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority, inability after due and timely diligence to procure required materials, equipment or parts, delays in completing required interconnection and electrical transmission facilities due to the fault of a party other than the Seller, delays in completing the geothermal wellfield and gathering system due to the shortage of available drilling rigs, equipment and supplies, unforeseen environmental conditions resulting in whole or part from the Seller's drilling and construction activities which require remediation or reconfiguration of the Facility, inadequate or excessive geothermal reservoir pressures or temperatures, or the presence of foreign substances therein. The affected party shall take all reasonable steps to mitigate the effects of the Uncontrollable Force. No Party shall, however, be relieved of liability for failure of performance to the extent that such failure is due to causes arising out of its own negligence or due to removable or remediable causes which it fails to remove or remedy within a reasonable time period. Nothing contained herein shall be construed to require a Party to settle any strike or labor dispute in which it may be involved. Any Party rendered unable to fulfill any of its obligations by reason of an Uncontrollable Force shall give prompt written notice of such fact and shall exercise due diligence to remove such inability within a reasonable time period. Notwithstanding the foregoing, an Uncontrollable Force shall not include (i) events arising from the failure to operate and maintain the Facility in accordance with Prudent Electrical Practices; (ii) an increase in the cost of variable and fixed operation and maintenance costs not otherwise caused by an Uncontrollable Force; (iii) events that merely increase the cost of a Party's performance; (iv) failure of third parties to provide goods or services essential to a Party's performance, except where such failure is caused by an Uncontrollable Force; (v) changes in regulatory schemes, government incentive programs or the like that adversely impact Seller's ability to perform or profit hereunder; (vi) delays in or an inability of a Party to obtain financing; or (vii) any action or inaction by, or a failure to obtain the necessary authorizations or approvals required in the regular course of business from, any governmental authority.

(b) The Department shall not be relieved by operation of this Section 5.01 of any liability to pay for the Unit Contingent Energy delivered by the Seller to the Delivery Point for acceptance by the Department or to make payments then due or which the Department is obligated to make with respect to performance which occurred prior to the Uncontrollable Force.

ARTICLE VI

EVENTS OF DEFAULT

Section 6.01. Events of Default. An "Event of Default" shall mean with respect to a party ("Defaulting Party"):

(a) The failure by the Defaulting Party to make, when due, any payment required pursuant to this Agreement, other than a payment being disputed in good faith pursuant to Section 4.04 hereof, if such failure is not remedied within fifteen (15) days after written notice of such failure is given to the Defaulting Party by the other party (the "Non-Defaulting Party"). The Non-Defaulting Party shall provide the notice by facsimile to the Authorized Representative of the Defaulting Party and also shall send the notice by overnight delivery to such Authorized Representative; or

(b) The failure by the Defaulting Party to provide clear and good title as required by Section 10.01, to have made accurate representations and warranties as required by Sections 2.09, 2.10, 3.01, or 3.02 or to perform any other material covenant or obligation hereunder not specifically covered in Section 6.01 (a)-(f), and, if curable, such failure is not cured within thirty (30) days after written notice to perform is given to the Defaulting Party; *provided, however,* that such thirty (30) day period shall be extended if such failure to perform cannot reasonably be cured within the thirty (30) day period and the Defaulting Party promptly and diligently undertakes to cure such failure and continues such curative efforts within the thirty (30) day period, and the Defaulting Party is either successful in curing the failure to perform, or such failure is waived, within a maximum period of nine (9) months from the date of such failure to perform; *provided further*, if Seller fails to maintain the Availability Factor greater than seventy-five percent (75%) in any Summer Month for two (2) consecutive years, Buyer shall have the right to immediately terminate this Agreement. If, at the end of any such curative period specified above, the Seller is unable or unwilling to restore the Unit Contingent Energy output of the Facility to its Nominal Rating or other agreed upon net electrical output, then the Buyer may, in the exercise of reasonable discretion and upon prior written notice to the Seller, decrease the Nominal Rating of the Facility to its average electrical output over the prior ninety (90) operating days, adjusted for average seasonal ambient air conditions, and the Buyer shall not be obligated to purchase Unit Contingent Energy produced by the Facility above such adjusted Nominal Rating of the Facility for the remaining term of this Agreement. The Non-Defaulting Party shall provide the notice by facsimile to the Authorized Representative of the Defaulting Party and also shall send the notice by overnight delivery to such Authorized Representative; or

(c) The voluntary filing by the Defaulting Party, or the institution by another person or entity, of a bankruptcy, reorganization, moratorium, liquidation or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditor's rights, or a petition is presented or instituted for its winding-up or liquidation, which, in the event such

petition or proceeding is instituted by a third party, is not stayed or dismissed within 60 days of such filing; or

(d) The Defaulting Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Defaulting Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the Non-Defaulting Party;

(e) The failure of Seller to schedule or deliver Unit Contingent Energy, whether or not due to Uncontrollable Force, for twelve (12) months out of any eighteen (18) month period, any time after the Initial Delivery Date; and

(f) The Seller's Nominal Rating is decreased to 10 MW.

Section 6.02. Remedies for Events of Default. (a) If an Event of Default occurs, and is not cured or waived within the time permitted under Section 6.01 above, if applicable, the Non-Defaulting Party shall possess the right to terminate this Agreement upon written notice (by facsimile or other reasonable means) to the Defaulting Party, such notice of termination to be effective immediately upon receipt. The payment associated with termination ("Termination Payment") shall be the aggregate of the Market Value and Costs calculated in accordance with Section 6.03, but, subject to the provisions of Section 6.02(b) and the last paragraph of Section 6.03 hereof, in no event to exceed the lesser of the actual pecuniary loss suffered by the Department as a result of the termination of this Agreement or the total amount of the Credit Guarantee Fund, including accrued interest, on the date of termination. Subject to the provisions of Section 6.02 (b) and the last paragraph of Section 6.03 hereof, the Termination Payment shall be the sole and exclusive remedy for the Non-Defaulting Party for a termination hereunder. Prior to receipt of such notice of termination by the Defaulting Party, the Non-Defaulting Party may exercise any remedies available to it at law or otherwise, including, but not limited to, the right to seek injunctive relief to prevent irreparable injury to the Non-Defaulting Party.

(b) Upon termination, the Non-Defaulting Party may withhold any payments it owes to the Defaulting Party for any obligations incurred prior to termination under this Agreement until the Defaulting Party pays the Termination Payment to the Non-Defaulting Party.

(c) The Seller shall have the right to sell the Unit Contingent Energy generated by the Facility to any third party upon commercially reasonable terms during any period when the Buyer is in default in its payment obligations under this Agreement for a period of fifteen (15) days or more after written notice of such default is given by the Seller to the Buyer, whether or not such default is due to an Uncontrollable Force.

(d) Notwithstanding the foregoing, termination of this Agreement shall be the sole and exclusive remedy of the Non-Defaulting Party for Events of Default under Sections 6.01(e) and 6.01(f).

Section 6.03. Termination Payment Calculations. The Non-Defaulting Party shall calculate the Termination Payment as follows:

(a) Market Value shall be (i) in the case the Department is the Non-Defaulting Party, the present value, calculated using a discounted cash flow model, of the positive difference, if any, of (A) payments under a Replacement Contract based on the Per Unit Market Price, and (B) payments under this Agreement; or (ii) in the case the Seller is the Non-Defaulting Party, the present value, calculated using a discounted cash flow model, of the positive difference, if any, of (A) payments under this Agreement, and (B) payments under a Replacement Contract (if any) based on the Per Unit Market Price, in each case using the Present Value Rate as of the time of termination (to take account of the period between the time notice of termination was effective and when such amount would have otherwise been due pursuant to the relevant transaction). The "Present Value Discount Rate" shall mean the sum of 0.50% plus the yield reported on page "USD" of the Bloomberg Financial Markets Services Screen (or, if not available, any other nationally recognized trading screen reporting on-line intraday trading in United States government securities) at 11:00 a.m. (New York City, New York time) for the United States government securities having a maturity that matches, as closely as possible, the average remaining term of this Agreement. It is expressly agreed that the Non-Defaulting Party shall not be required to enter into a Replacement Contract in order to determine the Termination Payment.

(b) To ascertain the Per Unit Market Price of a Replacement Contract with a term of less than one year, the Non-Defaulting Party may consider, among other valuations, quotations from leading dealers in energy contracts, any or all of the settlement prices of the NYMEX power futures contracts, any or all of the settlement prices on other established power exchanges and other *bona fide* third party offers; *provided*, *however*, that if there is no actively traded market for such Replacement Contract, the Non-Defaulting Party shall use the methodology set forth in paragraph (c).

(c) To ascertain the Per Unit Market Price of a Replacement Contract with a term of one year or more, the Non-Defaulting Party shall use the Market Quotation Average Price; *provided, however*, that if there is an actively traded market for such Replacement Contract, the Non-Defaulting Party shall use the methodology set forth in paragraph (b)

(d) "Costs" means brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred in terminating any specifically related arrangements pursuant to which the Non-Defaulting Party has hedged its obligations or entering into new arrangements which replace this Agreement, transmission and ancillary service costs caused by the termination of this Agreement incurred in connection with the Non-Defaulting Party enforcing its rights with regard to the termination of this Agreement, as well as its costs of enforcing this Agreement (including reasonable costs and attorneys' fees).

(e) In no event, however, shall a Party's Market Value or Costs include any penalties or similar charges imposed by the Non-Defaulting Party.

(f) The Non-Defaulting Party shall use reasonable efforts to mitigate the amount of the Termination Payment, including, to the extent practicable, the mitigation or elimination of the Costs.

(g) If the Buyer defaults in its payment obligations under this Agreement for a period of fifteen (15) days or more after written notice of such default is given by the Seller to the

Buyer, during the period of such default and after the termination of this Agreement, the Seller shall have the absolute right to resell electrical power generated by the Facility to one or more third parties without interference from the Buyer.

If the Defaulting Party disagrees with the calculation of the Termination Payment and the parties cannot otherwise resolve their differences, the calculation issue shall be submitted to dispute resolution as provided in Section 8.01 of this Agreement. If the Seller is the Defaulting Party the Department's sole source of the Termination Payment shall be the Credit Guarantee Fund as provided in Section 7.03 below unless the Seller is the Defaulting Party for reasons other than economic necessity or hardship resulting in a negative cash flow to the Facility for a period of ninety (90) consecutive days or longer and the cumulative amount of such negative cash flow is in the amount of not less than one million dollars ($1,000,000), impossibility of performance, the existence of one or more Uncontrollable Forces, or other circumstances beyond the Seller's reasonable control as of the time the Event of Default occurs which result in a negative cash flow to the Facility for a period of ninety (90) consecutive days or longer and the cumulative amount of such negative cash flow is in the amount of not less than one million dollars ($1,000,000). The Defaulting Party shall pay or cause to be paid the full amount of the Termination Payment as soon as practicable, but in no case later then 180 days following the termination date. Without limiting any other provisions of this Agreement, the payment and rate covenants of the Department set forth herein shall remain in full force and effect until payment of the Termination Payment.

ARTICLE VII

CREDIT GUARANTEE FUND

Section 7.01. Creation of the Credit Guarantee Fund. Prior to the Initial Delivery Date the parties shall enter into a written escrow agreement in a form which shall be mutually satisfactory the Seller and the Buyer (the "Escrow Agreement"). The purpose of the Escrow Agreement shall be, among other things, to establish a special reserve fund which shall operate during the Term to satisfy the Seller's creditworthiness and performance obligations under this Agreement (the "Credit Guarantee Fund"). The escrow agent shall be a banking institution organized under the laws of the United States or of the State and shall be held at an office of such escrow agent located within the State.

Section 7.02. Deposits to Credit Guarantee Fund. Upon, but not later than the Initial Delivery Date the Seller shall deposit into the Credit Guarantee Fund the sum $250,000 cash and shall provide the Department with satisfactory proof of such deposit. Thereafter, on the anniversary date of such initial deposit and on the same date of each successive year thereafter, (or the next Business Day if such date falls on a weekend or holiday) (the "Anniversary Date"), the Seller shall make an additional deposit of $250,000 cash to the Credit Guarantee Fund, for a total of four consecutive years or until such time as the principal balance of the Credit Guarantee Fund reaches $1,250,000. The Seller's obligation to make the initial deposit and each succeeding deposit to the Credit Guarantee Fund shall be extended during the operation of any Uncontrollable Force which shall have the effect of suspending or limiting the payment to the Seller of the Purchase Price for Unit Contingent Energy delivered to the Delivery Point. In that event, the Anniversary Date for the next succeeding deposit to the Credit Guarantee Fund shall

be postponed until the resolution or elimination of the Uncontrollable Force which caused the delay or limitation in payment to the Seller, and the Anniversary Date for each subsequent required deposit shall likewise be postponed for the length of the delay created by such Uncontrollable Force. After the Credit Guarantee Fund reaches the amount of $1,250,000, as further defined in the Escrow Agreement, the Seller shall be obligated to make additional deposits thereto only if the amount on deposit in the Credit Guarantee Fund falls below $1,250,000 due to the issuance of payments from the Credit Guarantee Fund to the Department for the purposes authorized in Section 7.03 below and the Escrow Agreement. In the event the Seller is obligated to make further deposits to the Credit Guarantee Fund due to authorized payments therefrom to the Department, such additional deposits shall be in the maximum amount of $250,000 per year, and shall commence one year from the date (or the next Business Day if such date falls on a weekend or holiday) the amount on deposit in the Credit Guarantee Fund drops below $1,250,000. The additional deposits to the Credit Guarantee Fund, if any are required, shall continue on the same date of each successive year thereafter until the amount required to be on deposit in the Credit Guarantee Fund is restored. The date for the initial makeup deposit and any subsequent deposits required hereunder shall be extended in the event of one or more Uncontrollable Force events which have the effect of delaying or limiting the Seller's receipt of payments under Sections 2.01, 4.01 and 9.02 of this Agreement.

Section 7.03. Payments from the Credit Guarantee Fund. The Department may, upon not less than ten (10) days prior written notice to the Seller, cause one or more payments from the Credit Guarantee Fund to be made to the Department, pursuant to the terms of the Escrow Agreement, in order to compensate the Department for losses arising out of an Event of Default by Seller, including but not limited to, payment of the Termination Payment provided for in Section 6.02 of this Agreement.

Section 7.04. Payment of Earned Interest. On or after each Anniversary Date following the Seller's initial deposit of funds into the Credit Guarantee Fund in accordance with Section 7.02 above, the Seller may, at its sole option, receive payment of any interest earned on the amount on deposit in the Credit Guarantee Fund during the preceding one-year period; *provided, however*, the Seller shall not be entitled to receive any such interest payments if the Seller has failed to make any required deposits to the Credit Guarantee Fund or is otherwise in default in any of its material obligations under this Agreement. The Seller shall not be entitled to payment of any interest earned on the amount on deposit in the Credit Guarantee Fund on more than one occasion per year and shall first give written notice of its intent to request payment of earned interest for the preceding year to the Department. The Escrow Agreement shall provide for the manner in which the Seller may request and receive payment of earned interest on the amount on deposit in the Credit Guarantee Fund.

ARTICLE VIII

DISPUTE RESOLUTION

Section 8.01. Dispute Resolution. Both Parties understand and appreciate that their long term mutual interests will be best served by effecting a rapid and fair resolution of any claims or disputes which may arise under this Agreement or from any dispute concerning Agreement terms. Therefore, both Parties agree to use their best efforts to resolve all such disputes as rapidly as possible on a fair and equitable basis. Toward this end both Parties agree to develop

and follow a process of presenting, rapidly assessing, and settling claims and other disputes on a fair and equitable basis. This process shall consist of (1) presentation of the claim by the claiming Party in writing, with supporting documentation, if any, and a specification of the amounts due or other remedies which if provided by the other Party would resolve the claiming Party's claim; (2) response by the other Party to the claiming Party's written presentation of its claim, in writing, accepting, rejecting or setting forth a counter proposal to the claiming Party's claim, along with any written explanation or supporting documentation the other Party elects to provide, which is to be delivered within seven (7) Business Days of receipt of the claiming Party's presentation of its claim; and (3) a meeting of the Parties' representatives with knowledge and authority to resolve the dispute within two (2) Business Days of receipt by the claiming Party of the other Party's written response. If any dispute or claim arising under this Agreement cannot be readily resolved by the Parties pursuant to the process referenced in this Section 8.01, the Parties shall have all rights available under law or equity.

ARTICLE IX

REMEDIES FOR FAILURE TO RECEIVE

Section 9.01. Department Failure. If the Department fails to accept delivery of all or part of the scheduled Unit Contingent Energy and such failure is not excused under the terms of this Agreement or by the Seller's failure to perform hereunder, then the Department shall pay the Seller, within ten (10) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sale Price from the Purchase Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

ARTICLE X

MISCELLANEOUS

Section 10.01. Title, Risk of Loss. The Seller warrants that it will transfer to the Department good title to the Unit Contingent Energy sold under this Agreement, free and clear of all liens, claims, and encumbrances arising or attaching prior to the Delivery Point and that Seller's sale is in compliance with all applicable laws and regulations. THE SELLER HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Risk of loss of the Unit Contingent Energy shall pass from the Seller to the Department at the Delivery Point.

Section 10.02. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State, without regard to the conflicts of laws rules thereof.

Section 10.03. Forum and Venue. All actions related to the matters which are the subject of this Agreement shall be forumed and venued in a court of competent jurisdiction in the County of Sacramento, State of California, to whose exclusive jurisdiction for such purposes Seller hereby irrevocably submits.

Section 10.04. Waiver of Trial by Jury. The parties do hereby expressly waive all rights to trial by jury on any cause of action directly or indirectly involving the terms, covenants or conditions of this Agreement or any matters whatsoever arising out of or in any way connected

with this Agreement. The provision of this Agreement relating to waiver of a jury trial shall survive the termination or expiration of this Agreement.

Section 10.05. Amendment. Neither this Agreement nor any provision hereof may be amended, waived, discharged or terminated except by an instrument in writing signed by the Department and the Seller.

Section 10.06. Counterparts. This Agreement may be executed in any number of counterparts, and upon execution by the parties, each executed counterpart shall have the same force and effect as an original instrument and as if the parties had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

Section 10.07. Taxes. The Purchase Price shall be deemed to include full reimbursement for, and the Seller is liable for and shall pay, or cause to be paid, or reimburse the Department for if the Department has paid, all taxes applicable to the Unit Contingent Energy that arise prior to the Delivery Point. If the Department is required to remit such tax, the amount shall be deducted from any sums due to the Seller. The Purchase Price does not include reimbursement for, and the Department is liable for and shall pay, cause to be paid, or reimburse the Seller for all taxes, if paid by the Seller, applicable to the Unit Contingent Energy arising at and from the Delivery Point, including any taxes imposed or collected by a taxing authority with jurisdiction over the Department. Either Party, upon written request of the other Party, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if either Party is exempt from taxes, and shall use reasonable efforts to obtain and cooperate with the other Party in obtaining any exemption from or reduction of any tax. Taxes are any amounts imposed by a taxing authority with respect to the Unit Contingent Energy.

Section 10.08. Transfer of Interest in Agreement. (a) Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld; *provided, however*, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements; (ii) transfer or assign this Agreement to an Affiliate of such party whose creditworthiness is equal to or higher than that of such Party; (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of the Facility whose creditworthiness is equal to or higher than that of such Party; (iv) transfer and assign all of its right, title and interest to this Agreement and the Fund to another governmental entity created or designated by law to carry out the rights, powers, duties and obligations of the Department under the Act; or (v) transfer or assign this Agreement to any Qualified Electric Corporation; *provided*, *however*, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof, and so long as the transferring party delivers such tax and enforceability assurance as the non-transferring party may reasonably request.

(b) To the extent permitted by law and without prejudice to the rights of the Department under this Agreement, the Department agrees to cooperate with the Seller in

executing such additional documents as may reasonably be required by the Seller to accomplish its financing objectives and requirements for the Facility.

(c) Anything herein to the contrary notwithstanding, the Department may transfer and assign this Agreement to any entity created or designated by law for such purpose and the Department shall have no further obligations hereunder; *provided, however*, that all right, title and interest in the Fund shall be transferred to such entity without any encumbrance for the benefit of all persons selling power or energy to the Department, including the Seller. The Department may also pledge and assign this Agreement to a bond trustee as collateral for bonds issued by the Department and may also transfer or assign this Agreement to any Qualified Electric Corporation.

(d) At any time after January 1, 2003, the Seller shall, upon the written request of Department, enter into a Replacement Agreement with a Qualified Electric Corporation. This Agreement shall terminate upon execution of the Replacement Agreement. The execution of the Replacement Agreement shall constitute a novation, which shall relieve Buyer of any liability or obligation arising after the date of termination of this Agreement. Seller's obligation to enter into a Replacement Agreement shall be subject to the condition precedent that the California Public Utilities Commission shall have conducted a just and reasonable review under Section 451 of the California Public Utilities Code with respect to such Replacement Agreement.

Section 10.09. Severability. In the event that any of the terms, covenants or conditions of this Agreement, or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court, regulatory agency, or other regulatory body having jurisdiction, all other terms, covenants or conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect unless a court, regulatory agency, or other regulatory body holds that the provisions are not separable from all other provisions of this Agreement.

Section 10.10. Relationship of the Parties. (a) Nothing contained herein shall be construed to create an association, joint venture, trust, or partnership, or impose a trust or partnership covenant, obligation, or liability on or with regard to any one or more of the parties. Each Party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement.

(b) All rights of the parties are several, not joint. No Party shall be under the control of or shall be deemed to control another Party. Except as expressly provided in this Agreement, no Party shall have a right or power to bind another Party without its express written consent.

Section 10.11. No Dedication of Facilities. The Seller's undertaking hereunder shall not constitute the dedication of the electric system or any portion thereof of the Seller to the public or to the other Party and it is understood and agreed that any undertaking under this Agreement by the Seller shall cease upon the termination of the Seller's obligations under this Agreement.

Section 10.12. No Retail Services; No Agency. (a) Nothing contained in this Agreement shall grant any rights to or obligate the Seller to provide any services hereunder directly to or for retail customers of any person.

(b) In performing their respective obligations hereunder, neither Party is acting, or is authorized to act, as agent of the other Party.

Section 10.13. Third Party Beneficiaries. This Agreement shall not be construed to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, obligation or undertaking established herein except as provided for in Section 10.08.

Section 10.14. Liability and Damages. No directors, members of its governing bodies, officers or employees of any Party and, except as otherwise expressly provided in this Agreement, no Party, shall be liable to any other Party or parties for any loss or damage to property, loss of earnings or revenues, personal injury, or any other direct, indirect, or consequential damages or injury, or punitive damages, which may occur or result from the performance or non-performance of this Agreement, including any negligence arising hereunder.

Section 10.15. Waivers. Any waiver at any time by any Party of its rights with respect to a default under this Agreement, or any other matter under this Agreement, shall not be deemed a waiver with respect to any subsequent default of the same or any other matter.

Section 10.16. Notices. Any formal notice, demand or request provided for in this Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person, or sent by either registered or certified mail, postage prepaid, or prepaid telegram or fax or other means agreed to by the parties to the addresses set forth in **Appendix B** to this Agreement.

Section 10.17. Waiver of Consequential Damages. In no event, whether based on contract, indemnity, warranty, tort (including, as the case may be, a Party's own negligence) or otherwise, shall either Party be liable to the other Party or to any other person or party for or with respect to any claims for consequential, indirect, punitive, exemplary, special or incidental damages or otherwise; *provided, however*, that this provision shall not limit in any way a Party's right to payment of the Termination Payment pursuant to Section 6.02 hereof or payments pursuant to Section 9.01 hereof.

Section 10.18. Standard Contract Provisions. The Standard Contract provisions attached as **Appendix C** to this Agreement shall apply to, and are hereby incorporated by reference into, this Agreement.

Section 10.19. No Cross Defaults. This Agreement shall be treated as a stand-alone transaction and shall not be cross defaulted to any other transaction between the Department and the Seller, and no default under any transaction of the Department relating to the Department's Water Resources Development System shall be a default under this Agreement, and no default by any Party under this Agreement shall be a default under any transaction of the Department relating to the Department's Water Resources Development System.

Section 10.20. CEC Grant. Upon receipt of any NERA grant from Commission for Environmental Cooperation (CEC) in relation to the Facility, the Seller shall promptly pay to the Department an amount equal to forty per cent (40%) of the amount actually received from such grant.

Section 10.21. Construction Reporting. Inspection Rights. (a) During the construction period of the Facility Seller shall proceed with due diligence to complete the Facility. On or before March 1, 2003, and on or before each March 1, June 1, September 1 and December 1

during the construction period, Seller shall provide the Department with quarterly reports on the progress of the construction and the date it expects to achieve the Initial Delivery Date.

(b) During the Term of this Agreement, upon written notice to Seller, the Department on an annual basis shall have the right to conduct an on-site visit of the Facility.

Section 10.22. Release of Claims. The Seller hereby releases and forever discharges the Department and, as the case may be, its predecessors, successors, heirs, assigns, and its past, present, and future associates, owners, stockholders, affiliates, divisions, subsidiaries, agents, directors, partners, employees, insurers or representatives, and all persons acting by, through, under or in concert with them, or any of them (the "Department's Releasees"), of and from any and all manner of action or actions, cause or causes of action, in law or in equity, suits, debts, liens, contracts, agreements, promises, liability, claims, demands, damages, loss, cost or expense, of any nature whatsoever, known or unknown, fixed or contingent, foreseen or unforeseen, patent or latent ("Claims"), which Seller has now or may hereafter have against the Department's Releasees, or any of them, by reason of any matter, cause or thing arising out of, based upon or relating to all claims made in the Seller's letters to the Department dated July 7, 2003 and September 12, 2003 and agrees that this release shall constitute a bar to all such Claims. The Seller expressly warrants that it has not transferred to any person or entity any right, cause of action or Claims released in this release.

Section 10.23. Prior Agreement Superseded. This Agreement supersedes the Unit Contingent Energy Purchase Agreement, dated June 22, 2001, as amended and restated on November 20, 2002, between the Buyer and the Seller.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

CALIFORNIA DEPARTMENT OF WATER RESOURCES acting solely under the authority and powers created by AB1-X, codified as Sections 80000 through 80270 of the Act , and not under its powers and responsibilities with respect to the State Water Resources Development System

By:_____
Name:
Title:

CLEARWOOD ELECTRIC COMPANY, LLC

BY: _____
Name:
Title:

APPENDIX A

(I) Facility: The California Facility or Nevada Facility, including all associated structures, machinery and equipment and other property, both real and personal, used in the operation of each Facility. The Facility will have a minimum Nominal Rating of 10MW and a maximum Nominal Rating of 30MW; however, the actual amount of energy available for delivery and purchase at the Delivery Point may be less due to geothermal reservoir conditions and seasonal variations in the ambient air conditions at the site of the Facility.

(II) Purchase Price: $61.00 per MWh

(III) Initial Delivery Date: On or before July 31, 2006.

(IV) Term: Commencing on the Initial Delivery Date and ending on December 31, 2012. No events, including without limitation any delay, shutdown, or outage due to an Uncontrollable Force event or any other event, shall cause the term of this Agreement to be extended beyond December 31, 2012.

(V) Delivery Point: **(a)** The Delivery Point for the Unit Contingent Energy shall be as follows:

(i) If Seller is delivering Unit Contingent Energy from the California Facility the Delivery Point shall be Pacific Gas & Electric's "Red Bud" substation, Highway 20, Clearlake Oaks, Lake County, California.

(ii) If Seller (or its affiliate to which this Agreement has been assigned) is delivering Unit Contingent Energy from the Nevada Facility the Delivery Point shall be into NP 15. Unit Contingent Energy from the Nevada Facility shall be scheduled by Seller into NP 15 via the Summit metering station at the interface of the CAISO and SPPC control areas. Delivery of Unit Contingent Energy from the Nevada Facility is subject to the following terms:

(1) Seller shall be responsible for costs and charges imposed by the CAISO arising from transmission line losses from the Nevada Facility to the Delivery Point incurred to move Unit Contingent Energy into NP 15, or to a Delivery Point under section (iii), herein. Seller shall reimburse the Department for these CAISO costs if the Department is invoiced by the CAISO and such

amounts may be netted by the Department against any amounts owed by the Department to Seller.

(2) Seller shall be responsible for any and all charges to ensure that the Unit Contingent Energy flows from the Nevada Facility through the SPPC system, over CAISO-Sierra Path 24, and into NP15, including, but not limited to, any and all congestion charges and losses.

(3) When power is delivered from the Nevada Facility, if the hydro overflow at Drum substation as determined by PG&E creates congestion on Path 24, either Party may elect to curtail Unit Contingent Energy generation. If Seller elects to curtail Unit Contingent Energy generation as a result of hydro overflow at Drum substation, Seller shall notify the Department. If the Department elects such curtailment, the Department shall notify Seller. Regardless of which Party elects to curtail, the right to curtail shall expire after a total of 250 hours per calendar year have been curtailed. The Department shall owe no amounts for any energy curtailed. Seller and the Department shall agree in writing to protocols delineating notice requirements and other specifics relating to this curtailment right prior to the Initial Delivery Date.

(iii) In the event that the CAISO moves from the current zonal congestion management system to a locational marginal pricing congestion management system, then Unit Contingent Energy, delivered from either the California Facility or the Nevada Facility, shall be delivered to one of the following three Delivery Points, (i) Newark substation (ii) Metcalf substation or (iii) Martin substation; provided, however, if Seller's CAISO costs and charges (Grid Management Fees, Zonal Congestion Price Differences and the Transmission Meter Multiplier costs expressed as a portion of the Purchase Price) exceed an average of $3.35 per MWh for three consecutive months, and are likely to continue to exceed that average on an ongoing basis through the remainder of the term of this Agreement, Seller shall have the right to terminate the Agreement. If Seller elects to terminate the Agreement as a result of the conditions described in the previous sentence, it shall first provide the Department with an option to determine the specific Delivery Point and pay all CAISO charges and costs in excess of $3.35 per MWh and should the Department elect to pay such charges, and continue to pay same, Seller shall not have the right to terminate the Agreement.

Operating Limits: The Facility's Operating Limits reflect the dispatch limitations, scheduling limitations, maintenance requirements, physical operating limits, etc. as specified in the original equipment manufacturer/ architect engineer/ vendor specifications which are to be provided by the Seller to the Department (60) sixty days after the Initial Delivery Date or as soon as possible thereafter as such data is provided by the third party. The

Department and the Seller agree that the specific Operating Limits are intended to reflect these specifications and limitations and according to the Department's dispatch of the Facility must not conflict with the Operating Limits and with CAISO requirements. In no event shall Operating Limits claimed by Seller be a basis for modification of the Nominal Rating under this Agreement.

APPENDIX B

Addresses

SELLER

Billing Address:	Clearwood Electric Company, LLC 233 Garnet Avenue San Carlos, California 94070 Telephone: (435) 647-5902 Fax: (435) 940-0804 frank@ampresources.com
Notice Address:	Clearwood Electric Company, LLC P.O. Box 4618 2455 Meadows Drive Park City, Utah 84060 Telephone: (435) 647-5902 Fax: (435) 940-0804 frank@ampresources.com
Authorized Representative:	Frank Wright

BUYER

Billing Address:	California Department of Water Resources 3310 El Camino Avenue, Suite 120 Sacramento, California 95821 Attention: Settlements Unit; Doreen Singh Telephone: (916) 574-0339 Fax: (916) 574-1239
Notice Address:	California Department of Water Resources 3310 El Camino Avenue, Suite 120 Sacramento, California 95821 Attention: Executive Manager Power Systems Telephone: ((916) 574-0339 Fax: (916) 574-2512
Scheduling:	Attention: Power Dispatcher Telephone: (916) 574-0161 Fax: (916) 574-2569
Payments:	Attention: Cash Receipts Section Telephone: (916) 653-6892 Fax: (916) 654-9882

APPENDIX C

CCC800 CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

Contractor/Bidder Firm Name (Printed)	*Federal ID Number*
By (Authorized Signature)	
Printed Name and Title of Person Signing	
Date Executed	*Executed in the County of*

CONTRACTOR CERTIFICATION CLAUSES

1. STATEMENT OF COMPLIANCE: Contractor has, unless exempted, complied with the nondiscrimination program requirements. (GC 12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)

2. DRUG-FREE WORKPLACE REQUIREMENTS: Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

b. Establish a Drug-Free Awareness Program to inform employees about:

1) the dangers of drug abuse in the workplace;

2) the person's or organization's policy of maintaining a drug-free workplace;

3) any available counseling, rehabilitation and employee assistance programs; and,

4) penalties that may be imposed upon employees for drug abuse violations.

c. Every employee who works on the proposed Agreement will:

1) receive a copy of the company's drug-free workplace policy statement; and,

2) agree to abide by the terms of the company's statement as a condition of employment on this Agreement.

Failure to comply with these requirements may result in suspension of payments under this Agreement or termination of this Agreement or both and Contractor may be ineligible for award of any future State agreements if the Department determines that any of the following has occurred: (1) the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (GC 8350 *et seq*.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two (2) year period because of Contractor's failure to comply with an order of a Federal court which orders Contractor to comply with an order of the National Labor Relations Board. (PCC 10296) (Not applicable to public entities.)

DOING BUSINESS WITH THE STATE OF CALIFORNIA

Contractor agrees to comply with all applicable laws and all applicable orders and regulations of regulatory authorities having jurisdiction over matters covered by this Agreement. Without limiting the foregoing, Contractor shall comply with the following:

1. CONFLICT OF INTEREST: Contractor needs to be aware of the following provisions regarding current or former State employees. If Contractor has any questions on the status of any person rendering services or involved with this Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (PCC 10410):

1). No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any State agency, unless the employment, activity or enterprise is required as a condition of regular State employment.

2). No officer or employee shall contract on his or her own behalf as an independent contractor with any State agency to provide goods or services.

Former State Employees (PCC 10411):

1). For the two (2) year period from the date he or she left State employment, no former State officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any State agency.

2). For the twelve (12) month period from the date he or she left State employment, no former State officer or employee may enter into a contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed contract within the twelve (12) month period prior to his or her leaving State service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (PCC 10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for *per diem*. (PCC 10430 (e))

2. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

3. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 *et seq.*)

4. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State, acting through the Department, will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:

a. When agreements are to be performed in the State by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the State are fulfilled.

b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the State not be subject to the franchise tax.

c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

6. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

7. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be*:* (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

8. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another State agency or other government entity.

9. APPROVAL: This Agreement is of no force or effect until signed by both parties. Contractor may not commence performance until Agreement is signed by Department.

10. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.

11. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State, acting through the Department, in the form of a formal written amendment, except as set forth in Section 10.08 of the Agreement.

12. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (GC 8546.7, PCC 10115 *et seq.*, CCR Title 2, Section 1896).

13. RECYCLING CERTIFICATION: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of recycled content, both post consumer waste and secondary waste as defined in the Public Contract Code, Sections 12161 and 12200, in materials, goods, or supplies offered or products used in the performance of this Agreement, regardless of whether the product meets the required recycled product percentage as defined in the Public Contract Code, Sections 12161 and 12200. Contractor may certify that the product contains zero recycled content. (PCC 10233, 10308.5, 10354)

14. NON-DISCRIMINATION CLAUSE: During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) *et seq.*) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 *et seq.*). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

15. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in California Department of General Services Standard Form CCC800 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

16. ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

1). "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.

2). "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

17. CHILD SUPPORT COMPLIANCE ACT: "For any Agreement in excess of $100,000, the contractor acknowledges in accordance with, that:

a). the Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with

earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and

b) the Contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department."

18. IMPERMISSIBLE CONTRACTOR ACTIVITIES WITH REGARD TO UNION ACTIVITIES: The Contractor, by signing this Agreement, certifies that it is aware of its requirements under Government Code Sections 16645 – 16649 which, among other things, precludes certain activities and provides civil penalties with regard to assisting, promoting or deterring union organizing.